

DSA.130 OP Outofcourt dispute settlement

Authors: Winfried Veil

Last update: 2023-06-06 18:57:35 | By: Winfried Veil

Created at: 2022-07-25 13:31:24

Art. 21 DSA

Out-of-court dispute settlement

1. Recipients of the service, including individuals or entities that have submitted notices, addressed by the decisions referred to in Article 20(1) shall be entitled to select any out-of-court dispute settlement body that has been certified in accordance with paragraph 3 of this Article in order to resolve disputes relating to those decisions, including complaints that could not be resolved by means of the internal complaint-handling system referred to in that Article.

Providers of online platforms shall ensure that information about the recipients' possibility referred to in the first subparagraph is easily accessible on their online interface, in a clear and user-friendly manner.

The first subparagraph is without prejudice to the right of the recipient of the service concerned to initiate, at any stage, proceedings to contest those decisions by the providers of online platforms before a court in accordance with the applicable law.

2. Both parties shall engage, in good faith, with the selected certified out-of-court dispute settlement body with a view to resolving the dispute.

Providers of online platforms may refuse to engage, when the dispute concerning the same information and the same grounds of alleged illegality or incompatibility of the content has already been resolved.

The certified out-of-court dispute settlement body shall not have the power to impose the binding solution on the parties.

3. The Digital Services Coordinator of the Member State where the out-of-court dispute settlement body is established shall, for a maximum period of five years, which can be renewed, certify the body, at its

request, where the body has demonstrated that it meets all of the following conditions:

(a) it is impartial and independent, including financially, of providers of online platforms and of recipients of the service provided by the providers of online platforms, including of individuals or entities that have submitted notices;

(b) it has the necessary expertise in relation to the issues arising in one or more particular areas of illegal content, or in relation to the application and enforcement of terms and conditions of one or more types of online platforms, allowing the body to contribute effectively to the settlement of a dispute;

(c) its members are remunerated in a way that is not linked to the outcome of the procedure;

(d) the dispute settlement is easily accessible, through electronic communication technology and provides for the possibility to initiate the dispute settlement and to submit the requisite supporting documents online;

(e) it is capable of settling dispute in a swift, efficient and cost-effective manner and in at least one official language of the Union;

(f) the dispute settlement takes place in accordance with clear and fair rules of procedure that are easily and publicly accessible, and in compliance with applicable legislation, including the requirements of this Article.

The Digital Services Coordinator shall, where applicable, specify in the certificate the particular issues to which the body's expertise relates and the official language or languages of the Union in which the body is capable of settling disputes, as referred to in the first subparagraph, points (b) and (e) respectively.

4. Certified out-of-court dispute settlement bodies shall report to the Digital Services Coordinator that certified them, on an annual basis, on their functioning, specifying at least the number of disputes they received, the information about the outcomes of those disputes, the average time taken to resolve them and any shortcomings or difficulties encountered. They shall provide additional information upon request of that Digital Services Coordinator.

Digital Service Coordinators shall, every [two] years, draw up a report on the functioning of the out-of-court dispute settlement bodies that they certified. That report shall in particular:

(a) list the number of disputes that each certified body has received annually;

(b) indicate the outcomes of the procedures brought before those bodies and the average time taken to resolve the disputes;

(c) identify and explain any systematic or sectoral shortcomings or difficulties encountered in relation to the functioning of those bodies;

(d) identify best practices concerning such functioning;

(e) contain recommendations on how to improve such functioning, where appropriate.

Certified out-of-court dispute settlement bodies shall make their solution available to the parties within a reasonable period of time and no later than 90 calendar days after the receipt of the complaint. In the case of highly complex disputes, the certified body may, at its own discretion, extend the 90 calendar days' time period, subject to a maximum total duration of 180 days.

5. If the body decides the dispute in favour of the recipient of the service, including the individual or entity that has submitted a notice, the provider of the online platform shall bear all the fees charged by the body and shall reimburse the recipient, including the individual or entity, for any other reasonable expenses that they have paid in relation to the dispute settlement. If the body decides the dispute in favour of the provider of the online platform, the recipient, [including the individual or entity, shall not be required to reimburse any fees or other expenses that the provider of the online platform paid or is to pay in relation to the dispute settlement, unless the body finds that the recipient acted manifestly in bad faith.

The fees charged by the body for the dispute settlement shall be reasonable and shall in any event not exceed the costs thereof for providers of online platforms and free of charge or available at a nominal fee for recipients of the service.

Certified out-of-court dispute settlement bodies shall make the fees, or the mechanisms used to determine the fees, known to the recipient of the services, including to the individuals or entities that have submitted a notice, and the provider of the online platform concerned, before engaging in the dispute settlement.

6. Member States may establish out-of-court dispute settlement bodies for the purposes of paragraph 1 or support the activities of some or all out-of-court dispute settlement bodies that they have certified in accordance with paragraph 2.

Member States shall ensure that any of their activities undertaken under the first subparagraph do not affect the ability of their Digital Services Coordinators to certify the bodies concerned in accordance with paragraph 2.

7. The Digital Services Coordinator that certified the out-of-court dispute settlement body shall revoke that certification if it determines, following an investigation either on its own initiative or on the basis of the information received by third parties, that the body no longer meets the conditions set out in paragraph 3. Before revoking that certification, the Digital Services Coordinator shall afford the body an opportunity to react to the findings of its investigation and its intention to revoke the body's certification.

8. Digital Services Coordinators shall notify to the Commission the out-of-court dispute settlement bodies

that they have certified in accordance with paragraph 3, including where applicable the specifications referred to in the second subparagraph of that paragraph, as well as the out-of-court dispute settlement bodies whose certification they have revoked. The Commission shall publish a list of those bodies, including those specifications, on a dedicated website that is easily accessible, and keep it updated.

9. This Article is without prejudice to Directive 2013/11/EU and alternative dispute resolution procedures and entities for consumers established under that Directive.